

North Carolina Psychological Association's
Expanded Response to Proposed Rule Changes for LPAs

June 7, 2019

The North Carolina Psychological Association (NCPA) wishes to expand and revise its earlier written response to the North Carolina Psychology Board (sometimes hereinafter the Board) regarding proposed changes to the rules regarding supervision of Licensed Psychological Associates (LPAs), changes which would eliminate supervision for all LPAs after a three to five year period of supervised practice. We note that the proposed changes would reverse the Board's own longtime understanding that the North Carolina Psychology Practice Act requires supervision of LPAs, without there being either an amendment to the Act or any comprehensive evidence to support such an amendment to the law or rules.¹ Under these circumstances, NCPA must oppose the proposed changes at this time.

We formed a work group to study this issue and discussed it at our Board of Directors meeting on March 15, 2019. We have followed the issue since. As we understand the current situation, the Psychology Board has declined the petition for rulemaking filed by four LPAs and two Licensed Psychologists (LPs), but the Board is planning to propose similar rule changes on its own. We understand these proposed rules will be published in the North Carolina Register this summer, at which point they will be open for public comment and hearing. NCPA will comment on the proposed rules at that time. Meanwhile, our comments in this revised response assume the proposed rule will be substantially similar to the proposals in the petition for rulemaking.

As we said in our previous response, NCPA currently has over 50 LPA members, and the Association is supportive of LPA issues. This support has included advocating for LPAs to be included on insurance panels, pursuing a variety of legislative actions that impact the practice of psychology in North Carolina for all psychologists (e.g., recently related to inclusion of LPAs in electronic record provisions), and providing a professional home for LPAs in NCPA which provides all membership benefits including lobbying for improved compensation and providing consultation on ethical and legal concerns. We remain committed to working with our LPA members and the representatives of other LPAs to find a process that is acceptable to both groups including a path toward independent practice.

However, at this time, NCPA cannot support rule changes that would lead to wholly unsupervised practice for LPAs, which we confidently believe is forbidden by the Psychology Practice Act, and has been since the Act was passed in 1967. In addition, the proposed rule changes ignore the current status of master's level training programs in psychology, none of which is assessed by an independent accrediting organization to determine if the program sufficiently prepares LPAs to provide unsupervised services to the public. These are substantive objections to the proposed rules, and we want them to be a matter of record with the Board at this time.

¹ Even if there were overwhelming evidence to support the proposed changes, there would still have to be an amendment to the Psychology Practice Act before the Board could eliminate the supervision requirements.

The Practice Act Requires Supervision for LPAs.

The N. C. Psychology Practice Act, which dates from 1967, provides that LPAs shall be supervised and does not allow them to practice without supervision. The Act says:

A licensed psychological associate *shall be supervised* by a qualified licensed psychologist . . . , in accordance with Board rules, specifying the format, setting, content, time frame, amounts of supervision, qualifications of supervisors, disclosure of supervisory relationships,

NCGS 90-270.5(e) (emphasis added). It says an LPA

who provides health services *shall be supervised* . . . by a qualified licensed psychologist holding health services provider certification . . . in accordance with Board rules.

Id., (emphasis added). Moreover, according to the Act, all the core elements of an LPA’s clinical practice require supervision, namely: (i) assessment of personality and functioning, (ii) neuropsychological evaluation, (iii) psychotherapy, (iv) counseling, (v) other interventions with clinical populations to modify behavior, and (vi) intrusive, punitive, and experimental techniques. *Id.* The law even states that “as the practice of psychology evolves, [the Board] may identify additional activities requiring supervision”, *id.*, but it never explicitly mentions ending supervision altogether.

Consistent with the underlying law, the current Board rules state that an LPA “*requires supervision*” to practice in each of the areas we have listed in the previous paragraph. 21 NCAC 54 .2006 (a), (b), (c) & (d) (emphasis added). To write a new rule now that dispenses with supervision after a number of years on the grounds that the statute’s required “amounts of supervision” may be zero and that its requisite “time frame” for supervision may end entirely at some point, ignores what the law actually says. Such a rule would change the meaning of the word “supervision” from “oversight,” which is an ongoing or recurring process,² to “judging,” which comes to an end once a decision is made.

These are substantive legal requirements, and the proposed rules would do away with them, effectively letting the rules trump the statute and the Board trump the General Assembly. Even though, as a matter of law, boards are presumed to understand what their underlying statutes mean, so that, when there is some ambiguity, the board’s stated understanding of its statutory powers deserves a certain amount of deference, a board’s opinion about its statutory authority needs to be consistent,³ and up until now the North Carolina Psychology Board has always

² To “supervise” is to “superintend or oversee,” Webster’s Ninth New Collegiate Dictionary. “Supervision” is “critical watching and directing (as of activities or a course of action).” *Id.*

³ “The weight of [an agency’s interpretation of its enabling statute] in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, *its consistency with earlier and later*

believed, and its rules have always said, that LPAs have to be supervised throughout their entire careers. The Board’s present about-face requires a substantial evidence-based reason, and the Board has not given any.

Master’s Level Graduates Are Not Foundationally Educated to Practice without Supervision.

The Association of State and Provincial Psychology Boards (ASPPB), of which the North Carolina Psychology Board is a member, develops and owns the Examination for Professional Practice in Psychology (EPPP). According to the ASPPB, the EPPP is

provided to state and provincial boards of psychology to assist them in their evaluation of the qualifications of applicants for licensure and certification.

Association of State and Provincial Psychology Boards, *2017 Psychology Licensing Exam Scores by Doctoral Program*, p.4. The exam tests “the knowledge that [is] *foundational to the competent practice of psychology.*” *Id.*, (emphasis added).

The pass rates for four of the long-standing doctoral psychology programs in North Carolina⁴ for the period 2015 – 2017 were as follows:

Duke	100% (15 out of 15 candidates)
East Carolina	100% (13 of 13)
UNC-Chapel Hill . . .	92.3% (12 of 13)
UNC-Greensboro . . .	100% (6 of 6)

The cumulative pass rate for these four programs was 97.8% (46 of 47). The overall pass rate for doctoral level graduates in all states and provinces was 80.8%, and the overall rate for master’s level graduates in all states and provinces was 53.1%. There is a marked difference between the passing rates for master’s and doctoral level candidates. The difference is even more pronounced when we compare the national master’s level pass rate to these North Carolina doctoral programs.

We understand the Board would propose two rule changes leading to fully independent practice by LPAs. First, LPAs who passed the EPPP with a score of 500 (the same level as LPs) would be allowed to practice independently after 3 years and 4500 hours of supervised practice.

pronouncements, and all those factors which give it power to persuade, if lacking power to control.” *Sav. & Loan League v. N.C. Credit Union Comm’n*, 302 N.C. 458, 446, cited in *N.C. Acupuncture Bd. v. N.C. Bd. of Physical Therapy Exam’rs* ____ N.C. ____, ____ (slip op. at 5 & 6) (2018) (emphasis added),

⁴ Overall pass rates for graduates of the programs at NCSU, UNC-CH (education), and UNC-Charlotte were not calculated, but “content area scores” for those programs’ graduates appear similar to the “content area scores” for Duke, ECU, UNC-CH (psychology), and UNC-G graduates.

Second, LPAs who scored between 440 and 499 on the EPPP would be allowed to practice independently after an additional two years of unspecified supervised practice (for a total of five years).

The basic problem with both changes is the idea that unstructured private practice, even with supervision, is a substitute for a structured program of professional education that results in demonstrable competence in the academic foundations of psychology. It is not. Even a master's level candidate who passes with a score of 500 or more will not have had the breadth of education that comes from a doctoral program. And, obviously, the problem is more pronounced with respect to the LPAs who pass with a score between 440 and 499. There is no reason to suppose – no evidence to suggest – that an additional two years of unspecified supervised work – work which might be narrow in scope and relatively simple – will fill in their gaps in the “foundational” knowledge that is needed for “competent practice.”⁵

A Score of 500 on the EPPP Does Not Equate to Graduation from a Program that Meets National Standards for Unsupervised Practice.

NCPA believes it is premature to create a path to independent practice for LPAs before an appropriate national accrediting organization establishes national standards for master's level training programs. Of course, NCPA knows that North Carolina permits a graduate of an unaccredited doctoral program to sit the examination and, if successful, be licensed,⁶ but that person must have attended a doctoral program and taken course work that “demonstrate[s] competency” in each of the following four key aspects of psychology, namely, (i) biological bases of behavior, (ii) cognitive and affective bases of behavior, (iii) social bases of behavior, and (iv) individual differences. 21 NCAC 54.1803(a)(10). NCPA suggests that these four key areas of knowledge, which are based on the educational requirements of the accredited doctoral programs, are the essential educational foundation to independent practice, but there is no similar educational requirement in the state statute or regulations governing licensure as an LPA.

Test scores alone are not enough to confirm academic competency (adequate knowledge) in a health profession. This is the reason there are national standards and an accreditation process for doctoral programs in health service psychology and for most other mental health training programs. The American Psychological Association (APA) has recently committed to developing such a process for master's level programs, and when it does, the result will be increased standardization of academic course work, supervised experience, and the articulation

⁵ Note that there is no means by which a doctoral level candidate for licensure can use supervised experience in lieu of demonstrated foundational knowledge -- that is, 500 on the EPPP -- in order to become a licensed psychologist.

⁶ It is actually rare for an LP applicant in North Carolina to come from an unaccredited doctoral program.

of expected competencies and intended scope of practice.

NCPA believes that the currently developing psychology master's level accreditation process should be incorporated into the pathway for independent practice in North Carolina. In addition to standardizing training, programs offering accredited training will be regularly assessed by external reviewers to ensure they meet identified training goals. Such national standards and an accreditation process for master's level programs offer the best long-term training for LPAs, consistency in psychology licensure, and protection of the public.⁷ Until then, we believe that unsupervised practice by LPAs is premature.

The Issue of Economic Self-Interest.

People have said to NCPA that the existing supervision rules only reflect LPs' economic self-interest. We understand that the same has been said to the Board. It is true that some LPs and other qualified supervisors are paid to supervise LPAs. It is also true that some LPAs must pay to be supervised. Many LPAs in the public sector are provided with supervision as part of their employment. NCPA doubts that this is a significant income for those LPs who do supervise or a significant cost to most of the LPAs who are supervised, at least after supervision is reduced to the lowest level. In fact, NCPA did not oppose when the Board reduced supervision even though this would have had more of an economic impact by reducing weekly supervision to monthly versus eliminating the requirement for supervision altogether for some LPAs. In any event, both groups are financially interested in the issue, and neither should be accused of taking a position out of economic self-interest.

NCPA also respectfully suggests that, if the Board believes it is reasonable to consider the relative economic interests for the groups involved, it should also consider the financial self-interest of the training programs. Doctoral programs provide more intensive training and they commonly provide tuition and stipend support for graduate students through teaching and research fellowships. In contrast, it is well-established that master's programs are income-producing for colleges and universities because they are tuition-dependent and train larger numbers of students. In addition, doctoral psychologists who teach in master's programs might be considered to have an economic self-interest in creating enhanced practice opportunities for master's level graduates of their own programs in that their own employment is dependent on enrollment and their institutions are benefitting from the tuition paid by master's students *vis a vis* their relatively low cost of training.

Furthermore, NCPA finds it concerning that, by framing the issue as one of economic self-interest, NCPA's appropriate and reasonable focus on the protection of the public is minimized. Since its inception the North Carolina Practice Act has been predicated upon supervision of LPAs because of their more limited training. Furthermore, by proposing to

⁷ The changes the Board is considering would allow master's level graduates from across the country to apply for licensure and eventually practice independently here, irrespective of the quality of their programs.

lower the effective passing rate on the EPPP from 500 to 440 for some LPAs, the issue as to whether two more years of unspecified supervision reasonably provides the foundational knowledge requisite to practice independently is not addressed. Even graduates of accredited doctoral programs must pass at the 500 level, and this level of demonstrated knowledge is the accepted minimum standard throughout the United States. If North Carolina were to substitute additional years of supervision for the objective measure of foundational knowledge, it would be the only state in the country to allow independent practice at less than the recognized minimum score of 500 and, thus, would have the lowest standards in the country.

Conclusion

Thus, in our opinion, while the N.C. Psychology Practice Act authorizes the Board to define by rulemaking the elements of supervision for LPAs that statute requires some level of meaningful supervision for all LPAs, and it does not permit the Board to altogether eliminate supervision by rulemaking. Nor, for reasons of quality assurance and protection of the public, should the Board want to altogether eliminate supervision prior to the development of national standards and an accreditation process for master's programs that are designed to prepare students for the independent practice of psychology. We believe that these elements are essential to public welfare.